

2004. Applicant again respectfully requests that the Examiner initial and return the Form PTO/SB/08.

Claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over AF 300 from Nufarm MSDS, Infosafe No. NU003. Claim 1 was provisionally rejected over the judicially created doctrine of Obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/916,611. The applicant respectfully traverses these rejections.

Claim 1 states,

“a herbicide composition comprising at least one acid herbicide and at least one surfactant in an effective amount such that said acid herbicide is dissolved in the surfactant and said at least one surfactant is present in a quantity equal to or greater than said at least one acid herbicide.” (emphasis added)

Enclosed is a declaration from Johnnie Roberts which shows that the herbicide in AF 300 herbicide does not dissolve in the surfactant as is required by the applicant's claimed (see the attached photos). The formulation according to AF 300 was hazy compared to the applicant's claimed invention which was clear. AF 300 does not teach dissolving the herbicide in the surfactant as is required by the applicant's claimed invention. It is noted that the Serial Number of the Declaration is the Serial of the parent application; however, the Declaration equally applies to this application. For the above reasons, this rejection should be withdrawn.

Double Patenting Rejection

Claim 1 was provisionally rejected over the judicially created doctrine of Obviousness-type double patenting as being unpatentable over claim 1 of copending Application No.

09/916,611. The applicant will file a terminal disclaimer to overcome this rejection once the prior art rejection is withdrawn.

In view of the above, each of the claims in this application is believed that the prior art rejection should be withdrawn.

Applicant believes no fee is due with this request. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 00306-00355-US from which the undersigned is authorized to draw.

Respectfully submitted,

By

Ashley I. Pezzner

Registration No.: 35,646
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, Delaware 19899
(302) 658-9141
(302) 658-5614 (Fax)
Attorney for Applicant

Enclosure: Johnnie Robert's Declaration